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If your practice includes patients covered by managed care plans or other private, employer-sponsored insurance, you should be aware of ERISA, the Employment Retirement Income Security Act, and its effect on these plans.

ERISA was passed by Congress in 1974 in an effort to protect employees covered by self-funded plans. Self-funded plans are pension and healthcare plans in which an employer pays directly for employee benefits rather than purchasing an insurance policy and paying premiums. The intent of ERISA was to protect workers if their employer, for whatever reason, failed to provide them with benefits to which they were entitled. Although ERISA is primarily concerned with pensions, it also deals with health benefits, and this is why you need to be aware of it

PROCESS AND DISCLOSURE

The main focus of the ERISA regulations is on process and assurance that benefit plans follow correct procedures. Of primary importance to psychiatrists are the disclosure provisions. ERISA contains extensive requirements about how, what, and when plans must provide information to beneficiaries. This includes information on plan provisions, covered services, and appeals procedures. ERISA sets uniform, minimum standards to ensure that employee benefit plans are established and maintained in a fair and financially sound manner. In terms of health benefits, the law contains little substantive information.

ERISA VIOLATIONS

As noted above, ERISA focuses primarily on process and consequently contains no specific information on issues such as pre-existing conditions, universal coverage, portability, or managed care. If you believe that the insurance company administering a patient's plan is withholding information from the patient in terms of reasons for denial or procedures to appeal or is denying access to covered benefits, this may be a violation of ERISA regulations. In such a situation, you should appeal the denial and ask for evidence that the plan is complying with ERISA. You can also make your concerns known to the plan administrator, usually the employer. In particularly egregious cases, you may want to consult an attorney who specializes in ERISA.

PREEMPTION OF STATE LAW

As a federal statute, ERISA preempts state law in certain areas (e.g., parity). There is currently controversy over the extent to which this preemption applies in terms of malpractice claims filed against insurance plans, as opposed to malpractice claims filed against plan physicians.

Efforts are underway by the APA, the American Medical Association, and other concerned groups to close the loopholes in ERISA, which currently protect insurance companies and managed care organizations at the expense of patients. These efforts include legal action, as well as lobbying Congress to change the law. This process takes time, however, and it may be several years before significant changes are made to the ERISA regulations. Due to the extremely complex nature of the regulation, you should consult an attorney who specializes in ERISA for assistance with specific questions.